

BINDER &  
SCHWARTZ

Denied, without prejudice to ED&F Man filing a subsequent motion to compel after reviewing the Bech-Bruun materials and conferring with SKAT.

June 1, 2020

SO ORDERED

**By ECF**

Dated: June 5, 2020

Honorable Lewis A. Kaplan  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

/s/ Lewis A. Kaplan

Re: *In re Customs and Tax Administration of the Kingdom of Denmark*  
(*Skatteforvaltningen*) Tax Refund Litigation, 18-md-2865 (LAK)

Dear Judge Kaplan:

We write on behalf of ED&F Man Capital Markets, Ltd. (“ED&F”) to request the Court’s assistance in requiring Skatteforvaltningen (“SKAT”) to search for and produce documents responsive to ED&F’s First Requests for Production of Documents (the “RFPs”).<sup>1</sup> As set forth below, SKAT has refused to search for documents requested by ED&F and advises that it will instead produce a set of documents previously provided by SKAT and/or the Danish Ministry of Taxation to the Bech-Bruun law firm as part of an inquiry by the Danish Parliament into SKAT’s operations (the “Bech-Bruun Documents”).<sup>2</sup> However, SKAT has provided no sound basis for its apparent presumption that the Bech-Bruun Documents contain all of the relevant documents sought by the RFPs. Notwithstanding repeated inquiries, SKAT has failed to explain how the Bech-Bruun Documents were compiled—including which documents were sought, whose files were searched, or what kinds of searches were conducted—and instead insists that ED&F seek the answers to such questions in the Bech-Bruun Documents themselves. Moreover, SKAT has advised us—based on a determination by the Danish Attorney Disciplinary Board that Bech-Bruun had a conflict of interest—that Bech-Bruun’s investigation was “not sufficiently independent or impartial” and, therefore, that the Bech-Bruun Report has “no evidentiary value.” Thus, SKAT itself does not regard Bech-Bruun’s work as reliable, raising further questions about the thoroughness of Bech-Bruun’s efforts to obtain documents from SKAT.

In addition, SKAT has taken the untenable position that significant categories of responsive documents in its custody or control are irrelevant to the third-party claims against ED&F and thus need not be searched for or produced, notwithstanding that documents relevant to SKAT’s allegations against the third-party claimants are necessarily also relevant to ED&F’s defenses in the third-party actions.

### **Background**

ED&F was brought into this action when several pension fund defendants, all ED&F clients, filed various third-party claims against ED&F, asserting causes of action ranging from

<sup>1</sup> The parties have exchanged numerous letters and have met-and-conferred on several occasions (including on April 27, May 5, and May 12) but have been unable to resolve the issues set out in this letter.

<sup>2</sup> A copy of SKAT’s Responses & Objections to the RFPs is attached hereto as Exhibit A.